IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11403 of 2004
with
SPECIAL CIVIL APPLICATION No 11404 to 11406 of 2004
with
SPECIAL CIVIL APPLICATION No 11912, 13631 of 2004
and
SPECIAL CIVIL APPLICATION Nos 12081 to 12089 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JADUVIRSINH NATVARSINH JADEJA
Versus
STATE OF GUJARAT

Appearance:
MS MEGHA JANI, MR BT RAO, MR AJ YAGNIK
AND MR PREMAL JOSHI for Petitioners

MR NAGESH SOOD, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
Date of decision: 04/11/2004

ORAL JUDGEMENT

Rule. Mr Nagesh Sood, learned AGP waives service of Rule for the respondents.

With the consent of the learned counsel for the parties, the petitions are taken up for final disposal today.

2. This group of petitions is directed against the orders passed by the Superintending Engineer, Rajkot, reverting the petitioners from the posts of Work Assistant. The petitioners also challenge the Circular dated 17.7.2004 issued by the Deputy Secretary, Department of Roads and Buildings, Government of Gujarat, on the basis of which the Superintending Engineer has purported to act for the purpose of passing the impugned orders of reversion.

3. The controversy in this group of petitions arises in the backdrop of the following staff set up and rules:-

3.1 Roads and Building Department of the State of Gujarat was part of the erstwhile Public Works Department which came to be bifurcated into Roads and Building Department and Irrigation Department with effect from 1.4.1979. A large number of employees were appointed in the erstwhile Public Works Department who continued to be the employees of the Roads and Building Department. Looking to the nature of their work, the employees in the subordinate staff, i.e. in Class-III services, consisted of the following two main categories:

(i) Workcharge Karkoons and Mistris: They were posted on the site and were doing technical work

(ii) Clerks: They were discharging duties in the offices and were doing administrative work

For Workcharge Karkoons and Mistris, the promotional avenue was Workcharge Assistant. The promotional avenue for Clerks was Senior Clerks. The pay scale of the respective posts, as revised from time to time, was as under:-

(i) Karkoon : Rs.3050 - 4590
(ii) Work Assistant : Rs.4000 - 6000

3.2 The executive instructions regarding the employees employed on the workcharge establishment whose salaries are debited to particular works are complied in

Workcharge Establishment Employees Manual as contained in the Government Resolution dated 12.12.1989. Paragraph 89.1 provides that the salaries of employees on establishment other than regular establishment shall be debited to the works on which staff is employed. Paragraph 89.3 of the Manual specifically provides that the workcharge employees are not appointed for office work and that workcharge employees may be required to do office work only in the specified exceptional cases and that generally, such employees should not be required to do office work for more than four months. Paragraph 92.11 provides for creation of new cadre of Work Assistant instead of the cadres of Karkoon, Sub Overseer, or Technical Assistant, with effect from 7.1.1984, and further provides that while their recruitment shall be governed by recruitment rules as contained in Notification dated 23.5.1985, henceforth, no recruitment of Karkoons, Mistris, Sub Overseers or Technical Assistants shall be made, and that all such posts, on the same falling vacant, be converted into the posts of Work Assistant and that such new posts shall be in the cadre of Work Assistant only. The existing employees working as Karkoons, Mistris, Sub Overseers or Technical Assistants shall be continued on the same post until they are promoted or they retire.

3.3 Work Assistant Class-III Recruitment Rules, 1985, framed under the proviso to Article 309 of the Constitution, as contained in the Government Notification dated 23.5.1985 provide that the posts of Work Assistant, Class-III, in the Road and Building Department may be filled in by promotion, direct recruitment or by transfer of Technical Assistants and Sub Overseers. As far as promotion is concerned, sub-rule (a) of Rule 2 provides that promotion to the post of Work Assistant Class-III, shall be made from out of the persons of proved merit and efficiency who have put in at least ten years' service as Karkoon or Mistri.

4. The case of the petitioners in all these petitions is that all of them had rendered services as Workcharge Karkoons for at least ten years and thereafter, they were deputed for technical training of two months' duration and upon completion of the training, the petitioners appeared at the departmental examination and after successfully passing the said examination, they were promoted as Work Assistants. While many of the petitioners were promoted as Work Assistants between 1990-91 and 1994-95, i.e. many of them have completed ten years of service as Work Assistants, the rest were promoted between 1995 and 2001. The petitioners'

grievance is that recently all of a sudden the Superintending Engineer, Roads and Buildings Circle, Rajkot has passed orders for mass reversion on the basis of the Government Circular dated 17.7.2004.

4.1 It is submitted that merely because some mistake might have been committed while giving some promotions on some posts of Work Assistants, the authorities are not justified in reverting the petitioners all of whom possessed eligibility criteria for promotion to the post of Workcharge Assistant as all of them had put in ten years or longer service as Workcharge Karkoons and had also undergone technical training and passed departmental examination before being promoted as Workcharge Assistant.

4.2 It is further submitted that on account of some such mistake in a few other cases, Clerks who were not eligible for promotion to the post of Work Assistant had filed petitions before this Court contending that their juniors were promoted as Work Assistants without considering the seniors' case and one such petition has been allowed by this Court but instead of pointing out the relevant correct facts before this Court in appeal or review, the State Government has issued the impugned Circular dated 17.7.2004 which has been misconstrued by the Superintending Engineer.

4.3 It is submitted that the respondents were therefore required to consider the facts of each individual case before taking the decision and the respondents were also required to give opportunity of hearing to the affected employees before taking any decision to revert a particular employee from the post of Work Assistant on the ground that he did not fulfil the eligibility criteria prescribed by recruitment rules for the post of Work Assistant.

4.4 It is also submitted by learned counsel for the petitioners that while most of the petitioners were appointed as Workcharge Karkoons and had been assigned duties at the site, there are some petitioners who were initially recruited with the designation of Clerk but in view of the administrative exigencies, they were posted at the site and they continued to render services as Workcharge Karkoons at the site. They also acquired proficiency on technical side and also underwent technical training and passed the departmental examination for which the syllabus consists of the following four papers:-

(a) Paper 1: Construction of building and General

(b) Paper 2: Construction of maintenance of Bridge

(c) Paper 3: Construction and Maintenance of Road and Bridge

(d) Paper 4: Practical Survey and leveling

It is therefore submitted that such petitioners appointed as Clerks were actually assigned field duties and had put in more than ten years service as Workcharge Karkoons in the field and therefore, they were eligible for promotion to the post of Work Assistants because the recruitment rules place emphasis on the actual work to be put in by the employees as Karkoons and Mistris in the field and not mere designation or nomenclature of the post.

5. On the other hand, Mr.Nagesh Sood, learned Assistant Government Pleader for the respondents, has submitted that the respondent-authorities have looked into the office record before passing the impugned orders and therefore, the impugned orders are legal and proper.

The learned Assistant Government Pleader is, however, not in a position to dispute the fact that the impugned orders of reversion have been passed in all cases without issuing any show cause notices or without giving any opportunity of hearing to the petitioners.

6. Having heard the learned counsel for the parties, the Court finds that the statutory recruitment rules framed in exercise of the powers under the proviso to Article 309 of the Constitution, as contained in the Notification dated 23.5.1985, specifically provide that the post of Workcharge Assistant in Class-III service shall be filled in either by promotion or transfer or by direct recruitment. For promotion to the posts of Work Assistant, persons who have rendered at least ten years' service as Karkoons or Mistris are eligible and from out of the eligible candidates, promotion is to be given to the persons of proved merit and efficiency. Although the recruitment rules do not refer to any departmental examination for eligibility for promotion, the learned AGP has produced Government Circular dated 7.5.1987 laying down that the departmental examination in the aforesaid technical subjects para 4.4 is required to be passed to be eligible for promotion to the post of Work

Assistant. In view of the aforesaid statutory rules and the Departmental Circular providing for technical departmental examination for promotion to the post of Work Assistant, it is clear that the Superintending Engineer could not have passed the impugned reversion orders without examining the facts of each individual case and ascertaining whether the concerned employees had rendered at least ten years' service as Karkoons or Mistris and whether they had undergone requisite technical training and passed the concerned technical departmental examination.

7. Since the respondents admittedly did not issue any show cause notice or give any opportunity of hearing to the petitioners before passing the impugned reversion orders, the impugned orders are liable to be quashed and set aside on this short ground alone.

8. Hence, these petitions are allowed. The impugned orders reverting the petitioners from the posts of Work Assistant are quashed and set aside on the aforesaid ground and the petitioners shall be reinstated as Work Assistants, but the respondents will be at liberty to examine the facts of each individual case before taking any action. In case the respondents are of the prima-facie view that the concerned employees were not eligible for promotion as Work Assistants, the respondents shall issue individual show cause notice to the concerned employees pointing out the material on the basis of which such prima-facie opinion is formed and giving each individual affected employee an opportunity to submit his reply and to produce material in support of his case. In case the affected employees seek particulars about the services rendered by them on the post, the concerned authority shall give inspection of such record within reasonable time and thereafter give them opportunity to file further reply, if any.

The respondent-authorities shall consider the actual services rendered by the employees as the recruitment rules specifically provide for such minimum experience of ten years as Karkoons or Mistris, without being swayed by the nomenclature of the post on which the petitioners were appointed. In case the Superintending Engineer takes a decision adverse to the concerned employee, he shall pass a speaking order and shall not implement such order for a fortnight from the date of communication of the order.

9. Rule is accordingly made absolute to the aforesaid extent only with no order as to costs. Direct Service permitted.

(M.S.SHAH, J.)

(sunil)